



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

ENFORCEMENT &
COMPLIANCE ASSURANCE
DIVISION

Reply To: 20-C04

RETURN RECEIPT REQUESTED

Mr. Thom Fischer
Chief Operating Officer
Electron Hydro, LLC
1800 James Street, Suite 201
Bellingham, Washington 98225

Re: INFORMATION REQUEST for Electron Hydro, LLC regarding property located
in the Puyallup River near Electron, Pierce County, Washington

Dear Mr. Fischer:

The U.S. Environmental Protection Agency (EPA), Region 10, is seeking information regarding the facility at property located in the Puyallup River near Electron, Pierce County, Washington a (Facility) owned or operated by Electron Hydro, LLC; Electron Management, LLC, Tollhouse Energy Company; and/or Electron Holdings, Inc. (Respondent). The enclosed Information Request is being issued pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318.

EPA is investigating Respondent's alleged noncompliance with the CWA. By Respondent's own account, beginning on or about July 15, 2020, Respondent began in-water work in the Puyallup River waterward of the Ordinary High Water Mark and beginning on or about July 20, 2020, through July 27, 2020, Respondent installed more than 2,000 square yards of artificial turf under an HDPE liner within a temporary bypass channel in the River. On or about July 28, 2020, Respondent diverted flow through the bypass channel. Then, on the night of July 29, 2020, the HDPE liner ruptured resulting in the release of hundreds of square yards of artificial turf and approximately four to six cubic yards of crumb rubber into the Puyallup River.

Section 308 of the CWA, 33 U.S.C. § 1318, authorizes EPA to require the submission of records, reports and other information for the purpose of determining whether any violations of the CWA have occurred, and to carry out any other provision of the CWA. **By this letter, Respondent is required to provide information and documents in accordance with the enclosed Information Request (Enclosure 1) within 30 days of your receipt of this request.**

To aid EPA's timely review of your responses, EPA prefers that you submit responses to this Information Request via an electronic submission. For instructions on submitting your response electronically, refer to Instruction A.8 in Enclosure 1 and contact Steven Potokar at

potokar.steven@epa.gov or at (206) 553-6354 should you have any questions regarding those instructions.

If electronic submission is not possible, submit your response to this Information Request to:

Mr. Steven Potokar
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101

Please ensure the Statement of Certification (Enclosure 2) is signed by you or a duly authorized officer or agent of Respondent and returned with the response to this Information Request.

Failure to respond fully and truthfully to this Information Request in a timely manner may subject you to an enforcement action for civil penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. In addition, provision of false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001. The information provided in response to this Information Request may be used by EPA in administrative, civil or criminal proceedings.

EPA's [Small Business Resources Information Sheet](https://www.epa.gov/enforcement/water-enforcement) provides information on compliance assistance that may be helpful to you. For more information about the CWA regulations and requirements, please visit the EPA's webpage: <https://www.epa.gov/enforcement/water-enforcement>.

Thank you for your cooperation in this important matter. For questions concerning this Information Request, please contact Steven Potokar, Compliance Officer, at potokar.steven@epa.gov or (206) 553-6354. For legal questions, please have your attorney contact Caitlin Soden, Regional Counsel, at soden.caitlin@epa.gov or (206) 553-6635.

Sincerely,

JEFFERY
KENKNIGHT

Digitally signed by
JEFFERY KENKNIGHT
Date: 2020.11.04
13:39:09 -08'00'

Jeff KenKnight, Chief
Water Enforcement and Field Branch

Enclosures

cc: Mr. Chris Spens
Tollhouse Energy Company

Mr. Svend Brandt-Erichsen
Counsel for Respondent

Ms. Lisa Anderson
Puyallup Tribe

Ms. Char Naylor
Puyallup Tribe

Enclosure 1

CWA INFORMATION REQUEST

This information is requested pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318.

A. INSTRUCTIONS

1. Provide a separate narrative response to each question and subpart of a question in this Information Request. Mark each answer with the number of the question (and subpart, if applicable) to which it corresponds.
2. For each question, provide a copy of each document relied on or referred to in the preparation of the response or that contains information responsive to the question.
3. Indicate on each document produced in response to this Information Request or in another reasonable manner, the number of the question to which it corresponds.
4. If requested information or documents are not known or are not available to you at the time of your response to this Information Request, but later become known or available to you, you must supplement your response to EPA. Moreover, if you find at any time after submission of your response that any portion is or becomes false, incomplete or misrepresents the facts, you must provide EPA with a corrected response as soon as possible.
5. Provide the name, title and business contact information for each person who prepared or was consulted in the preparation of your response. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question contained herein or who may be able to provide additional responsive documents, provide the name, title and business contact information for each such person and the additional information or documents that they may have.
6. If you believe a question is not applicable to the Facility, explain the reason for that belief.
7. The information requested herein must be provided whether or not you regard part or all of it as a trade secret or confidential business information. You may assert a confidentiality claim covering part or all of the information submitted, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318 and 40 C.F.R. Part 2, by labeling such information at the time it is submitted to EPA as “trade secret,” “proprietary,” “company confidential” or other suitable notice.

Information covered by such a claim will be disclosed by EPA only to the extent and by the procedures set forth in statutes and 40 C.F.R. Part 2, Subpart B. Note that certain categories of information are not entitled to confidential treatment. Unless you make a claim at the time you submit the information in the manner described in

40 C.F.R. § 2.203(b), it may be made available to the public by EPA without further notice to you. See also 41 Fed. Reg. 36902 (Sept. 1, 1976).

8. To aid electronic recordkeeping efforts, EPA prefers you provide all documents responsive to this Information Request in electronic format in accordance with a) through f), below. These electronic submissions are in lieu of hard copy. EPA uses a service (GoAnywhere) to receive large amounts of electronic information. When Respondent has compiled responsive documents and is ready to submit its information, alert Steven Potokar and he will initiate the file transfer request. You will then receive via email a system generated upload files request.
 - a) Provide all responsive documents in Portable Document Format (PDF) or similar format, unless otherwise requested in specific questions. If the PDFs are scanned images, perform at least Optical Character Recognition (OCR) for “image over text” to allow the document to be searchable. Submitters providing secured PDFs should also provide unsecured versions for EPA use in repurposing text.
 - b) When specific questions request data in electronic spreadsheet form, provide the data and corresponding information in editable Excel format and not in image format. If Excel formats are not available, then the format should allow for data to be used in calculations by a standard spreadsheet program such as Excel.
 - c) Provide a table of contents for electronic documents submitted in response to our request so that each document can be accurately identified in relation to your response to a specific question. We recommend the use of electronic file folders organized by question number.
 - d) Documents claimed as confidential business information (CBI) must begin with the file name CBI, followed by the rest of the file name. This will facilitate appropriate records management and appropriate handling and protection of the CBI. Please also mark each page that is confidential business information as such.
 - e) Include a statement certifying the attached files have been scanned for viruses and indicate what program was used.
 - f) Upload the files to GoAnywhere in .zip format. If the .zip file is larger than 10GB, create smaller .zip files (part 1, part 2, part3, etc.).

B. DEFINITIONS

All terms used in this Information Request have their ordinary meaning unless such terms are defined in this Information Request or in CWA Section 502, 33 U.S.C. § 1362 or in the regulations found at 40 C.F.R. Part 122 or 33 C.F.R. Parts 323 and 328, in which case the statutory or regulatory definitions shall apply. For purposes of this Information Request:

1. The terms “you” or “Respondent” mean Electron Hydro, LLC; Electron Management, LLC; Tollhouse Energy Company; Electron Holdings, Inc.; and all subsidiaries, officers, directors, managers, partners, employees, contractors and agents thereof, as applicable.

2. "Site" means all property owned or operated by Respondent located in the Puyallup River near Electron, Pierce County, Washington.
3. "Document" means any object that records, stores or presents information and includes writings, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory or storage device or in hard copy, including any form or format of these. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. Include all attachments to or enclosures with any responsive document.

C. INFORMATION REQUEST

Provide the following information for the Site and where specified, for each facility owned and/or operated by Respondent. Unless otherwise specified, provide all responsive information for the time period between October 1, 2016 and the date of this Information Request.

1. Provide the name and address of the legal owner of the Site. If the owner and operator of the Site are not the same entity, provide the name and address of the operator of the Site and provide contracts/legal documents between entities as they relate to ownership, purchase or buy-back agreements and contract operation.
2. Submit the following information for each facility and/or site owned and/or operated by Respondent and/or its subsidiaries, located within Alaska, Idaho, Oregon and/or Washington:
 - a) documentation of all permit coverage issued pursuant to the CWA since October 1, 2015; including all permits issued by EPA, a state or the United States Army Corps of Engineers, including all permits in accordance with all Nationwide Permits (NWP), such as, but not limited to, NWP 3, 13, 17.
 - b) all reports documenting any self-inspections, sampling, or records of actions relating to work at each facility and/or site in accordance with above referenced permits performed since October 1, 2015;
3. Describe all discharge events into the Puyallup River, including dates, times, and volumes of materials that discharged into water from October 15, 2015 to date of this Information Request. For each discrete activity or portion of the work that led to a discharge event, describe the following:
 - a) the approximate commencement and completion dates;
 - b) the approximate acreage of wetland(s) and/or linear feet of channel disturbed;
 - c) the identity of the person(s) authorizing the work activity;
 - d) the identity of the person(s) performing the work activity;

- e) the address(s) and telephone number(s) of the person(s) authorizing and performing the work activity as identified in d. and e., respectively;
 - f) the project purpose for the work activity;
 - g) all work activities conducted at the Site, including any ditch and stream/channel work and the activity dates of the work. Ditch work includes, but is not limited to, creation of any new ditches and changes made to the contours of any existing ditches;
 - h) all machinery or equipment used to perform the work activity in wetlands, streams, or ditches, at the Site;
 - i) copies of any work orders, receipts, reports, or other documents specific to the work activity in the wetlands, streams/channels, or ditches, including but not limited to construction reports and updates provided to any federal or state agency, or to Pierce County; and
 - j) any photographic documentation of the Site prior to and during the work activity.
4. Provide a detailed description of the events that occurred at the Site between July 15, 2020 and date of this Information Request, including but not limited to:
- a) the creation of the temporary bypass channel and materials used;
 - b) the installation of the artificial turf and rubber crumb;
 - c) the dewatering of the Electron Hydro Dam forebay and the resulting fish kill;
 - d) efforts to mitigate the effects of dewatering the Electron Hydro Dam forebay;
 - e) the release of artificial turf and rubber crumb into the Puyallup River; and
 - f) efforts to mitigate the effects of the release of artificial turf and rubber crumb.
5. Indicate on a map of the Site all locations where any dredged and/or fill material was placed and all locations where any other work activity took place, identifying the particular work activity that was performed.
6. Provide the following information about the temporary bypass channel constructed on or about July 20, 2020 and through July 27, 2020:
- a) the location of the temporary bypass channel in relation to the Puyallup River;
 - b) describe the features of the location of the bypass channel before the channel was constructed;

- c) exact dates of construction, methods of construction, and any subsequent changes to the channel;
 - d) describe the temporary bypass channel (i.e. width, length, and height);
 - e) the permitting authority, if any, for constructing the temporary bypass channel;
 - f) the permitting authority, if any, for installing artificial turf in the temporary bypass channel;
 - g) describe the flow diverted from Puyallup River into the bypass channel and any changes to the Puyallup River as a result of the bypass channel; and
 - h) the permitting authority, if any, for discharging artificial turf and rubber crumb into the Puyallup River.
7. Describe all current and future plans for work at the Site to be conducted by you or your agents.
 8. Provide copies of any and all correspondence, authorizations, or permits obtained from any Federal, State, or local government agency authorizing or pertaining in any way to the discharges of dredged or fill material into wetlands, streams, or ditches at the Site. This includes, but is not limited to, any documents between you and Natural Resources Conservation Service, Washington Department of Fish and Wildlife, and Pierce County.
 9. Identify and submit copies of all sketches, plans, and as-built drawings related to the planning and construction of ditches, roads, driveways, buildings, and facilities at the Site, including all temporary and permanent work.
 10. Identify and submit copies of all contracts, work assignments, invoices, requests for proposals, or bills related to the work activities identified in response to Question 3, above.
 11. Have you ever been cited for violations of CWA section 404 at any facility under your ownership, operation, or control? If so, please provide a date and description of each violation and indicate how each violation was resolved.
 12. Provide the following information about all dredged material; fill material, and/or excavated material placed on the Site:
 - a) original location from which the dredged, fill, or excavated material came and the identity of the person that brought the material from each location;
 - b) nature and type of dredged, fill, or excavated material placed (e.g., soil, rock, concrete, solid waste, organic material, etc.);
 - c) whether the dredged, fill, or excavated material contained any man-made solid waste,

hazardous waste, rubbish, or garbage of any kind; and

- d) describe in detail the nature, quantity, and chemical composition of any man-made substance contained in the material.

13. For the artificial turf installed in the Puyallup River and its rubber crumb component:

- a) describe the source of the artificial turf installed in the Puyallup River;
- b) describe the age and condition of the artificial turf installed in the Puyallup River;
- c) provide the amount of artificial turf and rubber crumb installed in the Puyallup River;
- d) provide the amount of artificial turf and rubber crumb released into the Puyallup River;
- e) provide the amount of artificial turf and rubber crumb captured and removed from the Puyallup River to date;
- f) provide the name(s) of the manufacturer(s) of the artificial turf and any existing documentation regarding the toxicity of the artificial turf and/or crumb rubber;
- g) conduct representative sampling of artificial turf and rubber crumb for metals, mercury, and PAH's using an accredited lab and following Standard Methods for sampling and testing. Representative sampling must include at least three samples each, in sufficient quantities, from the turf material currently piled and stored at the Site and turf material from the original source. To ensure samples are representative, sample the top, middle, and bottom of artificial turf stack to include samples from artificial turf and crumb rubber that has been exposed to ultraviolet light and artificial turf and crumb rubber that has not been exposed to ultraviolet light.
- h) conduct representative sampling of artificial turf and rubber crumb to obtain sediment elutriate samples for chemical analysis using the Toxicity Characteristic Leaching Procedure (TCLP test, SW 846 Method 1311). To obtain sediment elutriates for toxicity testing with amphipod *Hyaella azteca*, use the procedures in ASTM Method 1391-03 (2014 update) to obtain elutriate, followed by water column toxicity test with methods in either EPA (2002) or ASTM Method E729. Perform bulk sediment toxicity test with *Hyaella azteca* 10-day bulk sediment toxicity test procedure in ASTM Method E1706-20 (2020 update). Use an accredited lab and follow Standard Methods for sampling and testing. Representative sampling must include at least three samples each, in sufficient quantities, from the turf material currently piled and stored at the Site and turf material from the original source. To ensure samples are representative, sample the top, middle, and bottom of artificial turf stack to include samples from artificial turf and crumb rubber that has been exposed to ultraviolet light and artificial turf and crumb rubber that has not been exposed to ultraviolet light.

- i) conduct representative sampling using turf and rubber crumb for Fish Acute Toxicity using rainbow trout (*Oncorhynchus mykiss*) using an accredited lab and following Standard Methods for sampling and testing. Representative sampling must include at least three samples each, in sufficient quantities, from the turf material currently piled and stored at the Site and turf material from the original source. To ensure samples are representative, sample the top, middle, and bottom of artificial turf stack to include samples from artificial turf and crumb rubber that has been exposed to ultraviolet light and artificial turf and crumb rubber that has not been exposed to ultraviolet light.
- j) conduct sampling of sediment downstream of discharge point for rubber crumb, metals, mercury, and PAH's using an accredited lab and following Standard Methods for sampling and testing sediments.

Enclosure 2

STATEMENT OF CERTIFICATION

Electron Hydro, LLC
1800 James Street, Suite 201
Bellingham, Washington 98225

I certify that the enclosed responses to EPA's Information Request issued to Respondent are true, accurate, and complete. I certify that the portions of these responses which I did not personally prepare were prepared by persons acting on behalf of Respondent under my supervision and at my instruction, and that the information provided is true, accurate, and complete. I am aware that there are significant penalties for submitting false information in response to this Information Request, including the possibility of fines and imprisonment.

Signature

Printed Name

Title

Date